Supreme Court, U. S.
FILED
JUL 16 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 75-1064.

JACK B. KREMENS, Individually and as Hospital Director of Haverford State Hospital; FRANK S. BEAL, Individually and as Secretary of Public Welfare of the Commonwealth of Pennsylvania; WILLIAM B. BEACH, JR., Individually and as Deputy Secretary for Mental Health and Mental Retardation of the Department of Public Welfare of the Commonwealth of Pennsylvania, *Appellants,*

v.

KEVIN BARTLEY; STEVE GENTILE; LESLIE LEVINE; VICKI MATHEWS; MARK WEAND; Minors, Through Their Next Friend, Individually and on Behalf of All Others Similarly Situated, *Appellees.*

On Appeal From the Judgment of the United States District Court for the Eastern District of Pennsylvania.

PETITION OF THE SUPREME COURT OF PENNSYLVANIA, IN ITS ADMINISTRATIVE ROLE FOR THE UNIFIED PENNSYLVANIA JUDICIAL SYSTEM, AND OF THE ATTORNEY GENERAL OF PENNSYLVANIA, AS SPONSOR, FOR RECONSIDERATION OF DENIAL OF LEAVE TO FILE BRIEF AMICUS CURIAE BY THE SUPREME COURT OF PENNSYLVANIA.

ROBERT P. KANE,
Attorney General of the Commonwealth of Pennsylvania,
Sponsor of the Brief of the Supreme Court of Pennsylvania as Amicus Curiae.

BERNARD G. SEGAL,
JAMES D. CRAWFORD,
Attorneys for the Supreme Court of Pennsylvania.

SUSAN L. CARROLL,
SCHNADER, HARRISON, SEGAL & LEWIS,
1719 Packard Building,
Philadelphia, Pennsylvania. 19102
Of Counsel.

International Printing Co., 711 So. 50th St., Phila., Pa. 19143 — Tel. (215) 727-8711

IN THE

Supreme Court of the United States

No. 75-1064.

JACK B. KREMENS, INDIVIDUALLY AND AS HOSPITAL DIRECTOR OF HAVERFORD STATE HOSPITAL; FRANK S. BEAL, INDIVIDUALLY AND AS SECRETARY OF PUBLIC WELFARE OF THE COMMONWEALTH OF PENNSYLVANIA; WILLIAM B. BEACH, JR., INDIVIDUALLY AND AS DEPUTY SECRETARY FOR MENTAL HEALTH AND MENTAL RETARDATION OF THE DEPARTMENT OF PUBLIC WELFARE OF THE COMMONWEALTH OF PENNSYLVANIA,

Appellants,

v.

KEVIN BARTLEY; STEVE GENTILE; LESLIE LEVINE; VICKI MATHEWS; MARK WEAND; MINORS, THROUGH THEIR NEXT FRIEND, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Appellees.

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

This petition under Rule 58 seeks reconsideration of an order of the Court rejecting the request of the Supreme Court of Pennsylvania for leave to file a brief *amicus curiae* on behalf of the judicial branch of the Pennsylvania government in a case in which a federal three-judge court has imposed duties upon the courts of Pennsylvania even though it recognized that neither federal law nor the United States Constitution requires the state courts to perform these duties.

Because the brief was captioned merely as a brief "for the Supreme Court of Pennsylvania" without reference to the fact that the Supreme Court sought to speak only in its constitutionally mandated position as supervisor and administrator for Pennsylvania's unified judicial system,[1] it is likely that this Court rejected the petition in the belief that the Pennsylvania court spoke on its own behalf and that, if it were permitted to do so, other state trial and appellate courts across the country might assert similar claims to be heard in their own right. But contra the inexplicit caption of the brief amicus curiae, the Supreme Court of Pennsylvania sought to speak in behalf of the unified judicial system of Pennsylvania only, and not on its own behalf. See Alternate Motion for Leave to File Brief on Behalf of Supreme Court of Pennsylvania, *Amicus Curiae*, p. 5.

Furthermore, the brief *amicus curiae* of the Supreme Court of Pennsylvania had the sponsorship of the Attorney General. Therefore, the order of the Court denying leave to file the brief implicitly rejected the filing of the brief despite the sponsorship of the Attorney General of Pennsylvania in accordance with this Court's Rule 42(4) which provides that no consent is required to the filing of an *amicus* brief so sponsored.

1. The pertinent language of Article V, Section 10 of the Pennsylvania Constitution, which imposes these duties and responsibilities upon the Supreme Court of Pennsylvania, is reprinted in Appendix A to this petition.

PETITION OF THE SUPREME COURT OF PENNSYLVANIA, IN ITS ADMINISTRATIVE ROLE FOR THE UNIFIED PENNSYLVANIA JUDICIAL SYSTEM, AND OF THE ATTORNEY GENERAL OF PENNSYLVANIA, AS SPONSOR, FOR RECONSIDERATION OF DENIAL OF LEAVE TO FILE BRIEF AMICUS CURIAE BY THE SUPREME COURT OF PENNSYLVANIA.

1. On June 4, 1976, counsel for the Supreme Court of Pennsylvania presented a brief *amicus curiae* on behalf of that court, acting as the judicial arm of the Commonwealth, which brief was supported both by the sponsorship of the Attorney General of Pennsylvania (pp. 3-4) and by an alternate motion for leave to file the brief if the "sponsorship should in any way fail to qualify the Pennsylvania Supreme Court to appear as *amicus curiae* under Rule 42(4)" (pp. 5-7).

2. On June 21, 1976, this Court entered an order that "[t]he motion of the Supreme Court of Pennsylvania for leave to file a brief, as *amicus curiae*, is denied." 44 U. S. L. W. 3737.

3. Although the Supreme Court's brief was merely labeled Brief *Amicus Curiae* for the Supreme Court of Pennsylvania, the brief neither sought to vindicate any decision of the Supreme Court of Pennsylvania nor to protect that court against any increase in litigation before it.[2]

2. Permitting the Supreme Court of Pennsylvania to appear as *amicus curiae* would not set a precedent for the proposition that any court which would face an additional case load as a result of a federal decision has a right to appear in this Court as *amicus*. The order of the court below will not impose on the Supreme Court of Pennsylvania the danger that its own docket will become crowded as a result of the ruling below. Under Article II of the Appellate Court Jurisdiction Act of 1970, 17 Pa. Stat. Ann. §§ 211.201-211.205, the Pennsylvania Supreme Court will face only such appeals in these cases as it chooses to hear as a matter of its discretion under § 204 of the Act, 17 Pa. Stat. Ann. § 211.204.

Rather, that court sought to file the brief on behalf of the judicial branch of the government of the Commonwealth of Pennsylvania.

4. The Supreme Court of Pennsylvania, as the supervisory and administrative head of Pennsylvania's unified judicial system under Article V, Sections 1 and 10 of the Pennsylvania Constitution, is an appropriate body to appear before this Court as *amicus curiae* representing the interests of Pennsylvania's unified judicial system in the face of a holding by a three-judge federal district court imposing duties upon that state's judicial system which it acknowledges are not required by the United States Constitution. In this respect, the Supreme Court of Pennsylvania stands in no different position from the Judicial Councils of various federal circuits which have appeared in this Court as representatives of the interests of the federal judiciary within their respective circuits. See, *e.g.*, **Chandler v. Judicial Council,** 398 U. S. 74 (1970); **Judicial Council v. Nolan,** 406 U. S. 956 (1972); **Judicial Council v. Nolan,** 481 F. 2d 41 (3d Cir.), *cert. denied,* 414 U. S. 880 (1973); see also **Dooling v. Hilbert,** 476 F. 2d 355 (2d Cir.) *cert. denied,* 414 U. S. 878 (1973).

5. It is particularly appropriate that the Pennsylvania Supreme Court be allowed to appear as *amicus* in this case because, in all probability, it would have been permitted to intervene as of right. See **United States v. Terminal Railroad Association,** 236 U. S. 194, 199 (1915); *cf.* **Hunter v. Ohio ex rel. Miller,** 396 U. S. 879 (1969); **United States v. Paramount Pictures, Inc.,** 334 U. S. 131, 176-78 (1948). Should this Court affirm the lower court's holding that hearings are required, the named appellants in this case

would not have a direct interest in whether the precommitment hearings involved are held in the state courts or before some other neutral body.[3] On the other hand, the Pennsylvania Supreme Court, as representative of the state's judicial branch, has a very real interest in asking this Court to hold that a federal district court may not allocate responsibility for these hearings to state courts unless the United States Constitution or a valid federal statute requires that allocation.

6. Moreover, no reason has ever been given to this Court or to the Supreme Court of Pennsylvania why the Pennsylvania Court should not be permitted to file a brief as *amicus curiae*. In refusing his consent to the request of the Pennsylvania Supreme Court's request to file a brief *amicus*—a consent he granted to all others who requested it—counsel for appellees specifically declined to state "at this time" the reason for his action. See the letter of David Ferleger dated May 3, 1976, attached hereto as Appendix B. Thereafter, counsel for appellee did not communicate to the Court either his reason for refusing his consent or, indeed, the fact of his opposition to the motion of the Pennsylvania Supreme Court for leave to file a brief *amicus curiae*.

7. Finally, the sponsorship by the Attorney General comes within the purview of Rule 42(4) of this Court which provides that "[c]onsent to the filing of a brief of an *amicus curiae* need not be had when the brief is presented . . . for a State . . . sponsored by its Attorney General.

3. Nevertheless, the Attorney General of Pennsylvania has raised the issue of the burdens placed upon the Pennsylvania courts, but clearly has not made it his primary concern for the reasons set forth in paragraph 9 below.

. . ." Plainly, the Supreme Court of Pennsylvania, acting on behalf of that state's unified judicial system in its constitutionally imposed administrative role, is as much the state as are the executive or legislative branches of the state government. The fact that the Attorney General, as a member of the executive branch, has chosen to sponsor a brief written by independent counsel for the judiciary is merely a recognition of the doctrine of separation of powers within the Pennsylvania government, and in no way weakens the sponsorship of the brief.

8. Indeed, Rule 42(4) permits the filing of a brief *amicus curiae* without consent when the brief is presented "for a political subdivision of a State . . . sponsored by the authorized law officer thereof." If a township, borough or village has an absolute right to appear before the Court *amicus curiae* through its solicitor, surely the judicial branch of the state government itself has a right to appeal through its counsel, especially when supported by the sponsorship of the state's Attorney General.

9. Relying on the brief of the Supreme Court of Pennsylvania as *amicus curiae* in this case and the fact that the Pennsylvania Court had independent representation pursuant to his policy concerning the separation of powers, the Attorney General of Pennsylvania alluded to but did not elaborate upon the issues analyzed at length in the brief of the Supreme Court of Pennsylvania which he had sponsored. See Brief for Appellants, pp. 62-63.

WHEREFORE, the Supreme Court of Pennsylvania in its supervisory and administrative role under the Pennsylvania Constitution, by its counsel and by the Attorney General of Pennsylvania as sponsor of its brief, requests that this Court reconsider its order of June 21, 1976, and permit the

Supreme Court of Pennsylvania to file the brief as *amicus curiae* lodged with the Court on June 4, 1976.

Respectfully submitted,

ROBERT P. KANE,
Attorney General of the Commonwealth of Pennsylvania, Sponsor of the Brief of the Supreme Court of Pennsylvania as Amicus Curiae.

BERNARD G. SEGAL,
JAMES D. CRAWFORD,
Attorneys for the Supreme Court of Pennsylvania.

SUSAN L. CARROLL,
SCHNADER, HARRISON,
SEGAL & LEWIS,
1719 Packard Building,
Philadelphia, Pennsylvania.
19102
Of Counsel.

Dated: July 15, 1976.

APPENDIX A.

Pennsylvania Constitution, Article V, Section 10.
Judicial Administration.

(a) The Supreme Court shall exercise general supervisory and administrative authority over all the courts and justices of the peace, including authority to temporarily assign judges and justices of the peace from one court or district to another as it deems appropriate.

(b) The Supreme Court shall appoint a court administrator and may appoint such subordinate administrators and staff as may be necessary and proper for the prompt and proper disposition of the business of all courts and justices of the peace.

(c) The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peace, including the power to provide for assignment and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the judicial branch. . . .

APPENDIX B.

[Letterhead of Mental Patient Civil Liberties Project.]

May 3, 1976

Bernard G. Segal, Esquire
1719 Packard Building
Philadelphia, Pa. 19102

Re: *Kremens v. Bartley*

Dear Mr. Segal,

Some time ago, you orally requested my consent to the filing of an amicus curiae brief in this matter in the United States Supreme Court on behalf of your clients, the Supreme Court and Court Administrator of Pennsylvania. As your request came prior to even the filing of appellant's jurisdictional statement, I declined to agree at that time.

I am now informed by the appellants' counsel that you desire to file a brief "in respect to the limited issue of the impact of the lower court's decision on the Commonwealth judiciary." For various reasons which need not be enumerated at this time, I am unable to consent to the filing of this amicus brief.

I inform you of my decision at this time so that you will have ample opportunity to petition the Court for leave, should you desire to do so.

Sincerely,

David Ferleger
Attorney

cc: N. Watkins
B. Roth